

Appendix 3.10A
Clean Water Act Jurisdictional Determination



DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

REPLY TO
ATTENTION OF:

January 12, 2016

Regulatory Branch
File Number: MVS-2015-705

Ms. Laurie Farmer
U.S. Army Corps of Engineers
635 Federal Building
601 E. 12th Street
Kansas City, Missouri 64106-2824

Dear Ms. Farmer:

We appreciate the opportunity to review the data package you submitted on behalf of the National Geospatial-Intelligence Agency (NGA) requesting a preliminary jurisdictional determination (PJD). The proposed NGA action is to select, construct and operate a geospatial collection, analysis, and distribution campus in the St. Louis metropolitan area. Your site findings were shared with the St. Louis District Regulatory staff during a site visit on July 8, 2015. The proposed project sites are located at the following areas:

- Mehlville 101 Acre Site - Latitude 38.490556N, Longitude 90.385833W
- St. Clair County 182 Acre Site - Latitude 38.558333N, Longitude 89.857778W
- Fenton 167 Acre Site - Latitude 38.547778N, Longitude 90.460278W
- St. Louis City 100 Acre Site - Latitude 38.643333N, Longitude 90.209722W

Based upon a review of the provided data, we concur with your finding that no waters of the United States are located on the proposed Fenton or St. Louis City Sites. Therefore, Department of the Army Section 404 Clean Water Act permits would not be required to construct the NGA facility on either of these parcels.

Based upon a review of the provided data, we concur with your findings that waters of the United States are present within the Mehlville Site as evaluated via a review of USFWS NWI and USGS NHD mapping. The Mehlville Site visit was conducted on 15 April 2015. The jurisdictional areas include an approximate 3.51 acre stormwater retention pond, approximately 2,658 linear feet of unnamed intermittent stream, and roughly 373 linear feet of ephemeral stream. The intermittent stream in the northern part of the site flows westward and the intermittent stream in the southern part of the site flows southward, and both streams ultimately drain into the Meramec River. Additionally, a small wetland area was identified in the south-central part of the site below the retention pond. Based on your provided site observations, the wetland area is located at the outflow of the retention pond and is hydrologically connected to an adjacent unnamed tributary. This wetland is approximately 0.10 acres and appears to be created from surface scouring.

Based upon a review of the provided data, we concur with your findings that waters of the United States are present within the St. Clair County Site, as evaluated via a review of USFWS NWI and USGS NHD mapping. A site visit was also conducted on July 8, 2015 with St. Louis District Regulatory staff to assess potential jurisdictional waters of the US. During the site visit, potential jurisdictional areas were identified and include approximately 2,092 linear feet of a perennial stream, and roughly 250 linear feet of intermittent stream. The site contains a 0.88-acre pond, which appears to be hydrologically isolated. The perennial stream exists in the western part of the site and originates north of the property, and generally flows southward through the site, ultimately draining into Silver Creek. The intermittent stream is a tributary of the perennial stream and flows to the southwest. A forested/shrub wetland approximately 2.1 acres in size was identified in the southwestern part of the site. Midwest Region Wetland Determination Data Forms were supplied to log wetland information. No other wetlands were identified within the site. The St. Louis District Regulatory Branch concurs with the preliminary jurisdictional determination of the perennial channel, intermittent channel, and forested wetland would be regulated under Section 404 of the CWA. The onsite pond would not qualify as a water of the US because it did not contain a visible hydrologic connection.

As a result of this preliminary jurisdictional determination, any proposed impact to these jurisdictional features **will** require a permit review from the Corps of Engineers, under Section 404 of the Clean Water Act. A Department of the Army, Section 404 permit application can be downloaded from our website: <http://www.mvs.usace.army.mil/ConOps/permits/eng4345a.pdf>.

The **jurisdictional determination** for this project is considered a **preliminary** jurisdictional determination in accordance with Corps regulations at 33 CFR Part 331 (see enclosure). A preliminary jurisdictional determination is not appealable. If you wish, you may request an Approved Jurisdictional Determination (which may be appealed) by contacting our office for further instruction.

If you have questions about the Missouri sites, please contact Jaynie Doerr at (314) 331-8581, or if you have questions about the Illinois sites, please contact Chuck Frerker at (314) 331-8583. Reference should be made to file number **MVS-2015-705**. The St. Louis District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to go to our Customer Service Survey found on our web site at: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey

Sincerely,



Keith McMullen
Assistant Chief
Regulatory Branch

Enclosures

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary IED finds that there *may be* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

PJD Date: Dec 22, 2015

State	MO	City/County	Mehlville/St. Louis
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Name/	Laurie Farmer
Address of	Project Manager
Person	USACE
Requesting	635 Federal Building
PJD	601 E. 12th Street
	Kansas City, MO 64106

Name/	Laurie Farmer
Address of	Project Manager
Person	USACE
Requesting	635 Federal Building
PJD	601 E. 12th Street
	Kansas City, MO 64106

Name of Any Water Bodies _____ Tidal _____ Non-_____

on the Site Identified as
Section 10 Waters: Non-Tidal: none

☒ Office (Desk) Determination
☐ Field Determination:

Date of Field Trip:

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots, or plat submitted by or on behalf of the applicant/consultant: 15 Sep 15 by Laurie Farmer, USACE
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☒ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps _____
- ☐ Corps navigable waters' study: _____
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps. _____
- ☒ U.S. Geological Survey map(s). Cite quad name: Maxville, MO
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: _____
- ☒ National wetlands inventory map(s). Cite name: Maxville, MO
- ☐ State/Local wetland inventory map(s): _____
- ☐ FEMA/FIRM maps: _____
- ☐ 100-year Floodplain Elevation is: _____
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth 2015
- ☐ Other (Name & Date): _____
- ☐ Previous determination(s). File no. and date of response letter: _____
- ☒ Other information (please specify): see additional sheet for additional waters

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office: St. Louis District File/ORM #: MVS-2015-703 PJD Date: Dec 22, 2015

State: MO City/County: Mehlville/St. Louis Person Requesting PJD: Laurie Farmer

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
1	38.48997	90.38761	Riverine	373	ephemeral
2	38.49148	90.38723	Palustrine, emergent	0.10	emergent wetland
			n/a		
			n/a		
			n/a		
			n/a		

Notes:

retention pond (3.51 acres) appears to have been created within an intermittent tributary

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

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District Office St. Louis District

File/ORM # MVS-2015-705

PJD Date: Jan 11, 2016

State IL City/County Shiloh/St. Clair County

Nearest Waterbody: Silver Creek

Location: TRS,
LatLong or UTM: See Attached Maps

Name/
Address of
Person
Requesting
PJD
Ms. Laurie Farmer
U.S. Army Corps of Engineers
635 Federal Building
601 East 12th Street
Kansas City, Missouri 64106-2824

Identify (Estimate) Amount of Waters in the Review Area:

Non-Wetland Waters:

2,092 linear ft width acres Stream Flow: Perennial

Wetlands: 2.10 acre(s) Cowardin Class: Palustrine, forested

Name of Any Water Bodies
on the Site Identified as
Section 10 Waters: Tidal:
Non-Tidal:

☐ Office (Desk) Determination

☒ Field Determination: Date of Field Trip: Jul 8, 2015

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: USACE KC District

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite quad name: ARC-GIS

☐ USDA Natural Resources Conservation Service Soil Survey. Citation:

☒ National wetlands inventory map(s). Cite name: ARC-GIS

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is:

☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro 2014 and ARC-GIS 2015

☒ Other (Name & Date): Applicant document letter and data 9/15/2015

☐ Previous determination(s). File no. and date of response letter:

☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Kurt M. Miller 12-22-15
Signature and Date of Regulatory Project Manager
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

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PRELIMINARY JURISDICTIONAL DETERMINATION FORM

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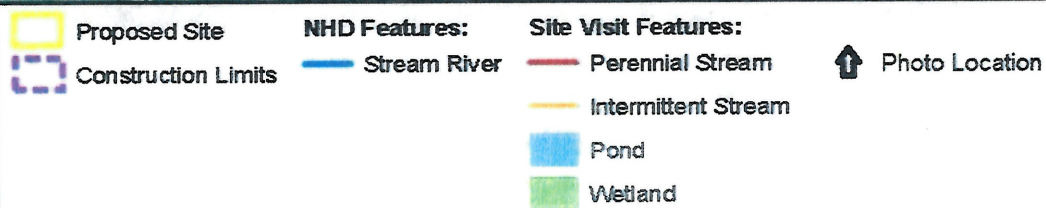
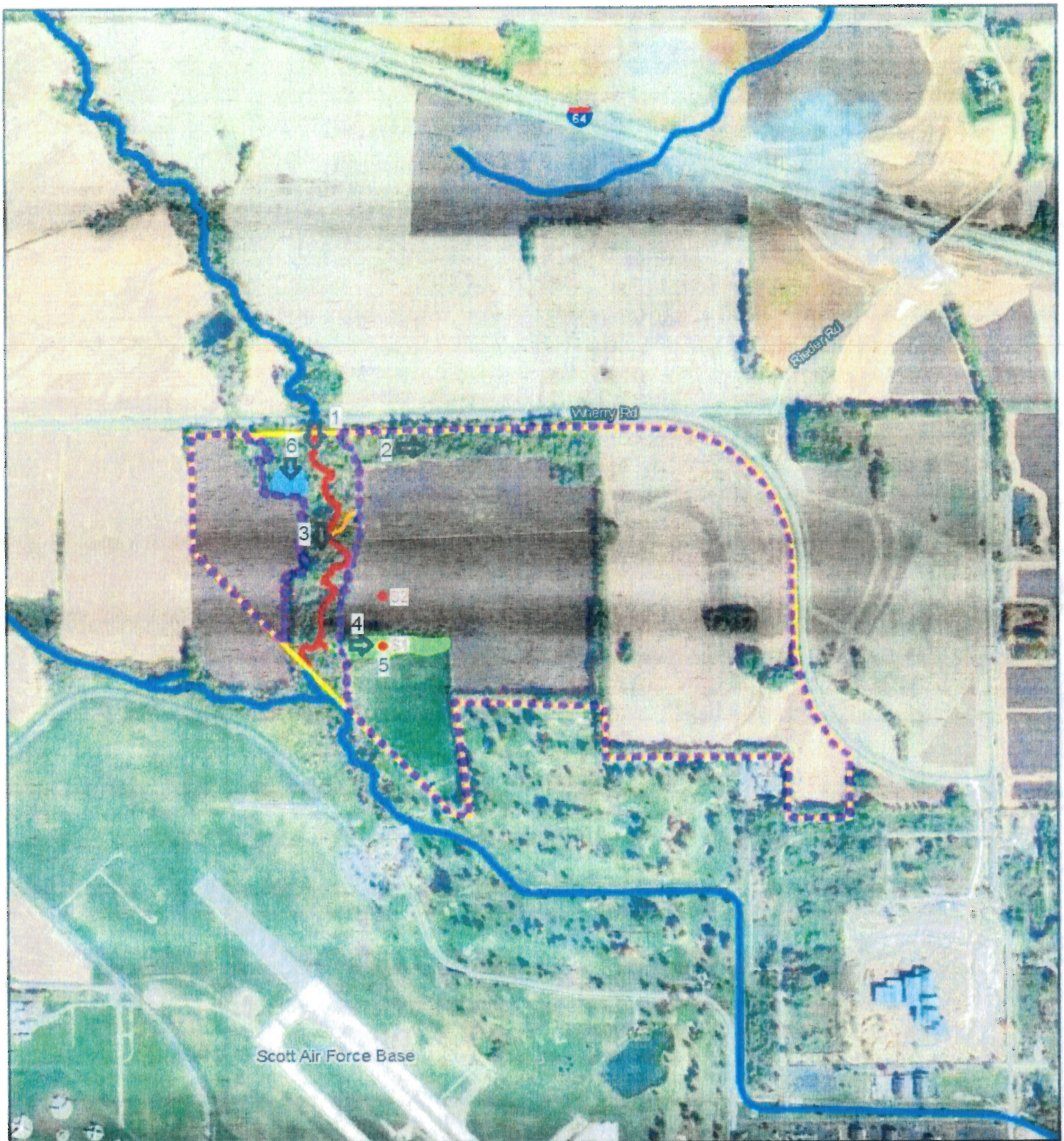
Appendix A - Sites

District Office File/ORM # PJD Date:
State City/County Person Requesting PJD

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
A	38.558111	-89.86	Palustrine, forested	2.1 acres	Forested/Shrub wetland, ad
B	38.56	-89.861	Riverine	2,092 feet	Perennial tributary to Silver
C	38.558	-89.861	Riverine	250 feet	Intermittent tributary to Silv

Notes:

See Attached Impact Sheet and Maps provided by the applicant for a list of Waters of the United States within the project site.



NHD: National Hydrography Dataset
 NHD Source: U.S. Geological Survey (USGS)
 Image Source: Google Earth Pro, Modified by CH2MHill, Image Flown 10/21/2014

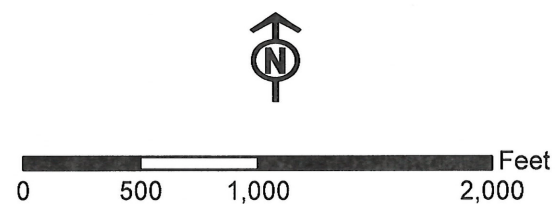
Figure 2
 St. Clair County Site
 Wetlands and Surface Waters



0 0.25 0.5 Miles



National Geospatial-Intelligence Agency
Project Location Map - MVS-2015-705
Shiloh, St. Clair Co., IL



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of Engineers®**
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